See Opp. 5 n.2, App. 2a n.3. She does not dispute the Supreme Judicial Court's ruling that, even without the disclosure of the confidential sources, the evidence was sufficient to prove that the Dana-Farber was responsible for confidential information being leaked to the Globe and Knox. App. 22a & n.17. Nor does she (or can she) dispute the Supreme Judicial Court's further ruling that because the information leaked concerned a matter of legitimate public interest and involved a public figure, her invasion of privacy claims failed as a matter of law. App. 21a-24a. Given these rulings, the Supreme Judicial Court understandably stated that "it might be tempting" to take issue with the trial court's finding that Ayash had a compelling need for the sources' identities to pursue her non-libel claims and to "express our opinion that the identities of any confidential sources were, in the end, *peripheral at best* to the plaintiff's case." App. 48a-49a (emphasis added).

11. It is at this point that Ayash is forced to resort to sleight of hand to argue that the disclosure order raises no significant First Amendment issues and does not conflict with decisions of lower federal and state courts. She asserts, for example, that the Supreme Judicial Court reversed the $840,000 verdict against the hospital's Dr. David Livingston "because of Dr. Ayash's inability to prove that he was a direct or indirect 'confidential source.'" Opp. 13. She makes this claim despite knowing that well before trial Dr. Livingston released Knox of any pledge of confidentiality and Knox thereafter produced all of his notes concerning off-the-record interviews with Dr. Livingston, testified as to all of his conversations with Dr. Livingston, and confirmed that Dr. Livingston was not the source who provided him with the confidential investigatory documents. *See, e.g.*, January 22, 2002 Trial Tr. 104-107, January 17, 2002 Trial Tr. 64-65, January 18, 2002 Trial Tr. 37. To state that the verdict against Livingston was reversed because Ayash did not know if he was a confidential source is akin to arguing that the Special Prosecutor in the Valerie Plame investigation never learned if Karl Rove was a source of Matthew Cooper.

12. Ayash also claims that the confidential sources were essential to her claims of joint and several liability against the Globe and the Dana-Farber. Opp. 5, 16, 24. Leaving to one side the fact that she never made this argument to the trial court, it is nothing more than legal mumbo jumbo. Not only is there no issue of the collectability of the judgments against any of the defendants (the only benefit of joint and several liability), the sole claim on which Ayash ultimately prevailed against the hospital was that it fired her in retaliation for her filing a sex discrimination charge against the Dana-Farber, a claim having absolutely nothing to do with the confidential sources and providing absolutely no basis for any type of joint and several liability.

13. Ayash continues in the same vein by repeatedly arguing that the disclosure order was proper because the Globe allegedly refused to identify *non*-confidential sources. Opp. 2, 15, 19. The undisclosed elements of this sophism are as follows: (a) Knox testified that he consulted approximately 24 confidential sources on a variety of topics in the course of preparing dozens of articles on the overdoses (only some of whom provided information published by the Globe); (b) Knox also testified that in the two years *after* the overdose articles were published, he spoke to two of those 24 sources on a non-confidential basis concerning matters unrelated to the overdoses; (c) based on that testimony, Ayash propounded an interrogatory asking Knox to reveal all Dana-Farber employees or trustees who provided him with non-confidential during the two years after the articles at issue were published; and (d) Knox refused to answer the interrogatory, stating that to do so would identify a confidential source. March 12, 2001 Contempt Hearing Tr. 18-22; Defendant Richard A. Knox's Memorandum in Opposition to Plaintiff's Motion to Compel Answer to "One" Interrogatory (and exhibits thereto) (May 24, 1999). To describe this as a refusal to identify non-confidential sources strains credulity.

14. Finally, Ayash contends that the sources were relevant to her infliction of emotional distress claims against

Knox. The theory of that claim was identical to the invasion of privacy claims dismissed as a matter of law by the trial court and the Supreme Judicial Court, i.e., that Ayash's rights were violated by the disclosure and publication of confidential but newsworthy information about her. App. 2a n.3, 19a-24a; Opp. App. A. Apart from the legal insufficiency of the claim, Knox advised the trial court that he would not rely on the identity of the sources in any way in defending against the claim and would accept whatever finding the plaintiff proposed as to the sources' identity. March 12, 2001 Contempt Hearing Tr. 26-28, 32-35. The sources therefore were not relevant to, nor necessary for, any legally viable claim.

15. Compelling the disclosure of confidential sources in pursuit of legally deficient claims while ignoring obvious alternative remedies directly conflicts with the decisions of other lower courts concerning the constitutional standard governing the disclosure of confidential sources. Certiorari should be granted to resolve the conflict between the Supreme Judicial Court and other lower federal and state courts on this important constitutional issue.

CONCLUSION

Petitioners respectfully pray that the petition for a writ of certiorari be granted.

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